

JURY TRIAL, REQUIREMENTS FOR — Unanimous verdict requirement...

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Article 2, § 23 of the Arizona Constitution states in part, "In all criminal cases the unanimous consent of the jurors shall be necessary to render a verdict." Rule 23.4, Ariz. R. Crim. P., provides an absolute right to poll the jury to ensure that the verdict is in fact unanimous. "Defendants have an undisputed right to a unanimous verdict by a properly constituted jury, unaided by outside influences such as alternate jurors who have been excused by the court." *State v. Hooper*, 145 Ariz. 538, 548, 703 P.2d 482, 492 (1985), *citing State v. Rocco*, 119 Ariz. 27, 579 P.2d 65 (App.1978).

A unanimous jury verdict is required on whether the defendant committed the criminal act charged. However, in a felony murder context, a "defendant is not entitled to a unanimous verdict on the precise manner in which the act was committed." *State v. Encinas*, 132 Ariz. 493, 496, 647 P.2d 624, 627 (1982); *see also State v. Jones*, 188 Ariz. 388, 398-99, 937 P.2d 310, 320-21 (1997); *State v. Lopez*, 163 Ariz. 108, 111, 786 P.2d 959, 962 (1990).

In *Encinas*, the defendant was charged with one count of first degree murder as both premeditated murder and felony murder. The court instructed the jury that it could find first degree murder if it determined that the murder was either premeditated or a felony murder. The jury was given only two verdict forms — guilty and not guilty of first degree murder. On appeal, the defendant argued that he was denied his right to a unanimous jury verdict under Article 2, § 23 of the Arizona Constitution because the court failed to give a separate form of verdict for each theory of first degree murder. He complained that some jurors could have found him guilty of premeditated murder, but

not felony murder, while others could have found him guilty of felony murder, but not premeditated murder. Thus, he could have been convicted "even though the jury could not unanimously agree on what kind of first degree murder he committed." *Encinas*, *supra*, at 496, 647 P.2d at 627. The Court held that there was no error:

Although the scenario described by appellant could have occurred, we are not persuaded that he was thereby denied any right. In Arizona, first degree murder is only one crime regardless whether it occurs as a premeditated murder or a felony murder. *See State v. Axley*, [132] Ariz. [383], 646 P.2d 268 (1982). Although a defendant is entitled to a unanimous jury verdict on whether the criminal act charged has been committed, [citation omitted], the defendant is not entitled to a unanimous verdict on the precise manner in which the act was committed. . . . Even if the events appellant describes occurred, he was still convicted of first degree murder by a unanimous verdict.

Id. at 496-97, 647 P.2d at 627-28.